



National Aeronautics and
Space Administration

Principal Center for Regulatory Risk Analysis and Communication

REGULATORY SUMMARY

EPA Proposes Amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) General Provisions to Replace "Once in, Always in" (OIAI) Policy

This information is provided as a service of NASA's Principal Center for Regulatory Risk Analysis and Communication (RRAC PC) to inform you of regulatory developments. If you have further questions and/or need assistance with this matter, please contact Sharon Scroggins/MSFC (256.544.7932, sharon.scroggins@nasa.gov).

Introduction

The U.S. Environmental Protection Agency (EPA) issued a proposed rule on 3 January 2007 ([72 Federal Register \[FR\] 69](#)) to amend the General Provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) addressing when a major hazardous air pollutant (HAP) source may become an area source by limiting its potential to emit (PTE). This proposal, if finalized, would replace EPA's 1995 "Once In, Always In" (OIAI) policy.

The existing OIAI Policy states that if a facility is a major source of HAPs at the first compliance date for an applicable NESHAP, then the facility will always be subject to that standard as a major source. This proposed rule would allow major sources to become area sources, no longer subject to formerly applicable NESHAP(s), if they limit their PTEs to below major source thresholds. Certain timing considerations and other conditions also are proposed, including provisions that such sources will be subject to any applicable requirements for area sources. Comments on the proposed rule must be received by EPA on or before 5 March 2007.

Background

Section 112 of the Clean Air Act (CAA) defines a major source of HAPs as:

"any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit considering controls, in the aggregate, 10 tpy or more of any hazardous air pollutant or 25 tpy or more of any combination of hazardous air pollutants."

PTE is defined in the NESHAP General Provisions as

"the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable." (40 CFR 63.2)

Area sources are defined as any stationary source of HAPs that is not a major source. Major sources are regulated more stringently than area sources. NESHAPs are technology-based emissions standards that are applicable to major sources of HAPs. For existing sources, these standards typically are based on the performance of the maximum achievable control technology (MACT) employed by the best-controlled similar sources. Most NESHAPs, often referred to as "MACT standards," do not regulate area sources. Standards for area sources may be based on MACTs, on generally available control technologies (GACTs), or on generally available management practices to achieve HAP emissions reductions.

Major sources can choose to reduce actual HAP emissions to levels below the major source thresholds through a variety of mechanisms, including implementation of pollution prevention practices. However, a source's status is based on its potential to emit HAPs, rather than on actual emissions. Therefore, to be recognized as an area source, a major source must limit its potential to emit HAPs in a federally enforceable way to ensure that its emissions remain below the major source thresholds, regardless of its actual emissions.

During the development of the NESHAP program, a significant question arose regarding when major sources may limit their PTEs to below the major source thresholds to avoid having to comply with major source MACT standards. EPA issued a memorandum on 16 May 1995 ([John Seitz, Director of the Office of Air Quality Planning and Standards, to the EPA regional air division directors](#)). In the memorandum, EPA issued its policy positions, stating:

- The latest date by which a source could obtain area source status by limiting its HAP PTE would be the first substantive compliance date of an applicable MACT standard;
- Once a source was required to comply with a MACT standard, i.e., once the first substantive compliance date had passed without the source limiting its PTE, it must always comply, even though compliance with the standard may reduce HAP emissions from the source to below major source thresholds; and
- A source that is major for one MACT standard would not be considered major for a subsequent MACT standard if the potential to emit HAP emissions were reduced to below major source levels by complying with the first MACT standard.

Summary of the Proposed Rule

The proposed rule includes language that would provide for a major source to become an area source at any time by limiting its PTE HAP to below the major source thresholds of 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. As an area source complying with its PTE limit, the source would no longer be subject to MACT standards, but would be subject to any applicable area source requirements issued pursuant to Section 112 of the Clean Air Act (CAA) and to Title V permitting if EPA has not

exempted the area source category from those requirements. EPA is soliciting comments on the following provisions of this proposed amendment:

- Sources that switch between major and area source status more than once must meet the major source MACT standard immediately upon that standard again becoming applicable to the source. EPA refers to this as the "immediate compliance rule." EPA also is considering including in the final rule an extension process for the immediate compliance rule through a case-by-case compliance extension request process or by listing specific exceptions to the immediate compliance rule.
- Major sources subject to a major source MACT standard that switch to area source status where EPA has established area source standards for the same affected source that was covered by the MACT standard would have to comply immediately with those area source standards if the first substantive compliance date had passed, or would have to comply by the first substantive compliance date if it has not passed. An area source standard is not likely to be more stringent than the major source MACT standard with which the source was already complying. As a result, the source is not likely to need additional compliance time after the source status change. However, if different emission points are controlled or different controls or other physical changes are required to comply with the area source standard the permitting authority may allow additional time to achieve compliance, not to exceed 3 years.
- Major sources that are subject to enforcement investigations or enforcement actions may not avoid these by becoming area sources. These sources may still seek area source status for the purpose of future applicability; however, they are not absolved of any previous or pending violations of the CAA that occurred while they were a major source.

Potential Impact to NASA Centers

The proposed amendments, if finalized, could affect NASA Centers that change from major sources of HAPs to area sources or from area sources to major sources. When considering potential status changes, Centers should be aware of the proposed timelines for complying with the applicable MACT or area source standards.

Consider a Center that is a major HAP source, but the Center emits less than 100 tons of each criterion pollutant¹. Also consider that the Center has a diesel generator and is subject to the Reciprocating Internal Combustion Engines (RICE) NESHAP (40 CFR 60, Subpart ZZZZ). After installing the control technology required to comply with the RICE NESHAP, the Center's HAP PTE falls below the major source levels. Under the OIAI Policy, the Center would always be subject to the NESHAP standards regardless of its PTE, including all the recordkeeping and reporting requirements. The Center also would be required to maintain a Title V permit even though its PTE dropped below the major source thresholds. Under EPA's proposed rule, the Center could agree to federally enforceable limits on HAP emissions and would no longer be required to comply with the RICE NESHAP or to maintain its Title V permit.

¹ Note: Title V permits are required for major sources that emit or have the PTE to EMIT: 10 tpy or more of any one HAP; 25 tpy or more of any combination of HAPs; 50 tpy or more of volatile organic compounds (VOCs); or 100 TPY or more of any criteria pollutant